

## COPYRIGHT REGISTRATION OF DESIGNS

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FEBRUARY 19, 1925.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

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Mr. VESTAL, from the Committee on Patents, submitted the following

### REPORT

[To accompany H. R. 12306]

The Committee on Patents, to which was referred the bill (H. R. 12306), to authorize copyright registration of designs, having had the same under consideration, reports the bill to the House without amendment and recommends that the same do pass.

The purpose of this bill is to encourage and promote the production of artistic designs in the United States by furnishing adequate protection against piracy for artistic articles of manufacture. The design patents act has long been admittedly insufficient for these purposes; first, because of the cumbersome provisions which it contains for search and examination as to novelty and invention; second, because of the narrow scope of the protection when secured. The essential need of the designers and manufacturers in this field is prompt protection because the life of an artistic design is often very brief. It takes months to obtain a patent and the commercial value of the design may be destroyed by means of cheap imitations before the patent is issued. The result has been that the design patents act has become discredited and largely disused. It is the purpose of the present bill to replace that act.

The subject is one which has been before Congress in previous sessions with the result that it has received a considerable amount of public notice. Several hearings have been held on this bill and it does not appear that there is any objection to the substance of the bill at the present time on the part of anyone.

The bill repeals the existing laws relating to design patents, and transfers the registration of designs of all kinds to the copyright office. It assimilates the protection granted to that secured under the copyright laws now in force and the procedure for securing registration to that of the present practice of the copyright office.

What is demanded is prompt registration of the design for a short term at small expense. This is possible under the application of the principles of copyright. The originator of a design is not an inventor but an author. The design is the result of work of authorship, not of invention.

It is not essential that the design shall be new, but only that it shall be original in its actual application to or embodiment in some manufactured article. Mr. Henry D. Williams, representing the Patent Law Association of New York, and having 40 years' familiarity with the administration of our patent law, pointed out, in his testimony in support of the legislation proposed at the public hearings on the bill, that to obtain a design patent, the applicant must have a new thing, and the Patent Office must make a careful search to determine that his design is new, but—

The copyright law is wholly different. \* \* \* In the copyright law we are really not concerned with the question of novelty. If the work is an original work of authorship, that is enough. It must not have been plagiarized; it must not have been copied. It must be an original work of authorship. But if somebody back in the centuries wrote the same thing it don't make any difference, because the right granted is the right to prevent others from copying this work. \* \* \* In a suit for infringement of copyright the defendant may justify by showing that his work is an independent act of authorship. In a suit for infringement of copyright the plaintiff must prove to the satisfaction of the court that the defendant has copied the work of the plaintiff or of the plaintiff's author. There can be no innocent infringement of a copyright \* \* \*

Section 2 of the bill defines the term "design" to mean an original conception in relation to a manufactured product as to pattern, shape, or form applied to or embodied in such product for the purpose of ornamentation or decoration. There are thus four important elements in a design which is subject to protection by this bill: (a) Originality, (b) relationship to a manufactured product, (c) application to or embodiment in such product, and (d) a purpose of ornamentation, decoration, etc. To this definition is added "dies, molds, or devices for adapting the product for use in producing an artistic or ornamental effect," which extends the definition to cover designs for articles, such as type faces, not in themselves ornamental but used in the production of ornamental results. As a limitation, it is provided that the term "design" shall not include any merely functional shape or form. Such things if new may be the subject of mechanical patent, but not of copyright.

Under claim of copyright, registration can be made upon a simple application filed by the author of the design or his assignee claiming that the design as applied to the article described in the application is original and otherwise complies with the law. No examination as to novelty or originality is required so that the procedure would be simple and expeditious.

The application must be filed within four months after the design has been in public use in this country or within four months from the earliest date on which any application for its registration was filed in any foreign country.

Section 1 of the bill states what persons are entitled to secure the privileges granted. They are citizens of the United States and citizens or subjects of foreign states or nations which have reciprocal copyright arrangements with the United States under the general copyright act of 1909. Such persons if authors of designs as defined

in the act, or the assignees of such authors, may obtain copyright for their designs upon registration in the Copyright Office.

The protection secured is the exclusive right to reproduce the copyrighted design and to sell and use reproductions thereof embodied in or applied to the manufactured product described in the application registered or products of similar character.

The right secured shall not be construed to lessen the present legal right of any one to make, use, or sell manufactured articles protected, or parts thereof when made, used, or sold as repair parts, nor to deprive anyone of the right to illustrate fashions by pictorial reproductions.

Every copyright for a design may be assigned, and such assignment may be recorded in the copyright office. The acknowledgment of such assignment before the suitable officer in the Diplomatic Service abroad or by clerks or commissioners of United States courts in this country, and the record of such acknowledgement in the copyright office when made, shall be prima facie evidence of the execution of such assignment.

It shall be unlawful during the term of the protection for any person other than the owner of the copyright without license from such owner to copy the registered design or any characteristic original feature thereof, or to make any obvious or fraudulent imitation thereof, for the purpose of sale or public distribution or to sell or expose for sale or publicly distribute copies so made.

But in order to protect reasonably the innocent purchaser of pirated goods it is provided that such sale or distribution by any other than the manufacturer "shall be unlawful only as to goods sold or publicly distributed after notice or knowledge of the registration of the design."

The protection is for a first term of 2 years at a registration fee of \$2, with right of extension for 18 years at a cost of \$20.

The register of copyrights is authorized to determine and designate the classes of manufactured products under which registrations may be made and to make rules and regulations for such registrations, and \$50,000 is appropriated for clerical service, office equipment and supplies for carrying into effect the act for the fiscal year 1926; while the Librarian of Congress is authorized to appoint clerks for carrying on the work.

The registrations made are to be included in the Catalogue of Copyright Entries, and this catalogue shall be admitted in any court as prima facie evidence of the facts therein stated.

All articles manufactured to which a copyright design has been applied shall bear a notice including the number of the registration with the mark "D. Rgd." or "Design registered U. S.", and falsely marking such articles with fraudulent intent to deceive the public incurs a penalty of \$100.

The Federal courts are given jurisdiction of cases arising under the provisions of the act, and the remedies in case of infringement and the provisions for their enforcement agree in principle, and to a considerable extent in phraseology, with the provisions of existing laws for the protection of intellectual and industrial property.

Fraudulent registration is made punishable by a penalty of \$500 to be charged against the plaintiff in any case where suit is brought on

such a registration, which should prove an effective deterrent of dishonest and careless registrations.

If the owner of the design or the manufacturer of the article fails during any period of two years to sell or otherwise dispose of articles embodying or containing the registered design the registration shall be held invalid and all injunctions thereunder shall automatically cease.

Notwithstanding the repeal of the design patent laws, opportunity is given any person who has an application for a design patent pending, to elect within six months after this act goes into effect, either to demand that a design patent be granted him, or to file an application for copyright registration of his design "as a continuation of and substitute for said application for a design patent, and to obtain copyright protection therefor under the provisions of this act."

It is provided that no registration of a design under this act "shall be valid if the certificate of registration shall have been issued to an author or proprietor to whom or to whose assignee shall have been previously issued a design patent in this country for the same design."

It is impossible to foresee how many applications for registration may be filed during the first year of the operation of this act. It is believed that registrations will be very freely made for the two-year term of protection at the fee of \$2. But it is probable that only a certain proportion of the registrations so made will be extended for the 18 years' further protection provided by the act, including only such designs as have proven popular when used or sold during the two-year period of protection. Under these circumstances an appropriation of \$50,000 is proposed for the first fiscal year for clerical service, office equipment, and supplies, in order to try the matter out. If a large number of registrations are demanded, a larger appropriation will be required.

